Supreme Court, U.S.
FILED
05-1346 APR 20 2006
OFFICE OF THE CLERK

No.

In the

Supreme Court of the United States

October Term, 2005

LOUISIANA-PACIFIC CORPORATION,
Petitioner,

v.

LESTER BUILDING SYSTEMS, a division of Butler Manufacturing Company, and Lester's of Minnesota, Inc.,
Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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April 20, 2006

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QUESTION PRESENTED

Whether a district court may, as the Second, Third, and Eleventh Circuits have held, enter an injunction against a state court proceeding that it has found will "directly interfere with and seriously impair" its continuing jurisdiction over the implementation of a class settlement by awarding to a third party damages for injuries that were addressed in the settlement, *or whether*, as the Ninth Circuit held in this case, the Anti-Injunction Act (28 U.S.C. § 2283), bars the entry of such an injunction?

PARTIES TO THE PROCEEDING

Petitioner Louisiana-Pacific Corporation ("LP") has no parent corporation. Barclays Global Investors, N.A. owns more than 10% of LP's stock. Respondents are Lester Building Systems and its affiliated builder, Lester's of Minnesota, Inc. (collectively, "Lester"). In the court below, the State of Minnesota appeared as *amicus curiae*.

Although petitioner and respondent are the only parties actively involved in the current dispute, this appeal arose out of the district court's continuing jurisdiction over a class action settlement in a case in which the above-named parties as well as the following have been involved:

Plaintiffs: Sandpiper Village Condominium Corp., a Florida corporation and all others similarly situated; Craig Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Cheryl Ostergren, co-conservator for Keith Ostergren, a minor, on behalf of themselves and all others similarly situated; Keith Ostergren, a minor; Byron Alton; Susan Alton; Cpc Ltd., Washington Real Estate Developer. *Defendant*: Harry A. Merlo. *Defendant-Intervenors*: Insurance Company of North America; Cigna Insurance Company of North America; Northwestern Pacific Indemnity Company, Agricultural Insurance Company; National Union Fire Insurance Company; Lexington Insurance Company; Granite State Insurance Company. *Plaintiff-Intervenors*: James W. Gilles; Dale J. Matherly; Douglas Meckling; Michael L. Watts.

In addition, the district court's injunction in this case prevented entry of a portion of a jury award in a proceeding pending before a Minnesota state court. See *Lester Building Systems, et al., v. Louisiana-Pacific Corp., et al.*, McLeod Co. No. C6-00-335 (Minn. D. Ct.). In addition to the parties listed on the front page of this petition, the parties to that state proceeding included Canton Lumber Company.

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PETITION FOR WRIT OF CERTIORARI

Louisiana Pacific Corporation ("LP") respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINION BELOW

The divided opinion of the court of appeals (App. 1a-69a) is reported at 428 F.3d 831, with the dissent beginning at App. 44a. The opinion of the district court granting LP's

motion for an injunction barring entry of a judgment in Minnesota state court is reported at 234 F. Supp. 2d 1170 (App. 70a-91a).

JURISDICTION

The opinion of the court of appeals was filed on October 24, 2005. App. 2a. An order denying rehearing and rehearing en banc was filed on January 20, 2006. App. 92a. This Court has jurisdiction pursuant to 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The district court issued the injunction under authority of the All Writs Act, 28 U.S.C. § 1651(a), which provides:

§ 1651. Writs

> (a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

In vacating that injunction, the court of appeals relied on the Anti-Injunction Act, 28 U.S.C. § 2283, which provides:

§ 2283. Stay of State court proceedings

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

STATEMENT OF THE CASE

At issue is the appropriate limit that the Anti-Injunction Act, 28 U.S.C. § 2283, places on a federal district court's ability to oversee and protect a comprehensive and complex nationwide class action settlement. The district court concluded that a portion of a Minnesota s ate court jury verdict

received by respondent Lester would, if awarded, give a subgroup of class members duplicate compensation for injuries that were settled years before. The district court, which retained continuing jurisdiction over the earlier settlement, therefore enjoined that part of the verdict from being entered as a judgment.

By a 2-1 vote, a panel of the court of appeals reversed, holding that no exception to the Anti-Injunction Act applied here. It held that (1) even though the procedure set up in the Class Settlement was ongoing, and even though the district court explicitly retained jurisdiction over the implementation of that procedure, the "in aid of its jurisdiction" exception did not apply because the Class Settlement had been "resolved," and (2) the "to protect or effectuate its judgment" exception did not apply because the court viewed that exception to apply solely to the parties to the initial settlement, not third parties who benefited from that settlement or to a *res* associated with the benefits of the settlement itself.

1. In 1996, the United States District Court for the District of Oregon approved a nationwide class settlement of lawsuits (the "Class Settlement") alleging damages associated with the failure of certain siding materials ("Inner-Seal Siding") manufactured and sold by Petitioner Louisiana-Pacific Corporation ("LP"). In that settlement, the owners of buildings constructed with Inner-Seal Siding prior to January 1, 1996, became entitled to recover the costs associated with certain repairs and replacements of that siding. The Class Settlement established a sophisticated claims process under which class members could identify, establish, and recover damages associated with their Inner-Seal Siding. Under the Class Settlement, LP has paid more than $500 million in claims since 1996. App. 3a-6a, 72a-74a.

In return for LP's financial contributions and its concession of defenses, the Class Members released LP from all claims (with certain exceptions not relevant here) associated with their use of Inner-Seal Siding. In addition, LP ensured

that the Class Settlement operated to release not only LP but also builders and others in the chain of distribution. As the court of appeals noted, that provision "was included to foreclose the possibility that class members would bring claims against businesses located in the Inner-Seal Siding chain of distribution." App. 6a, 73a.

The Class Settlement included a number of contingencies. For instance, it established a process under which LP could make periodic decisions whether to make additional payments into a Settlement Fund in exchange for extending the terms of the Class Settlement. See App. 4a n.1, 73a.

To provide oversight of the settlement process, the District Court appointed a Special Master, and it also retained

> exclusive and continuing jurisdiction over the Actions and Parties, including all members of the Class, the administration and enforcement of the settlement, and the benefits to the Class, including for such purposes as supervising and implementation, enforcement, construction, and interpretation of the Settlement Agreement.

App. 6a; see also App. 73a-74a.

2. In March 2000, a manufacturer of hog barn building kits (Respondents Lester Building Systems and its affiliated builder, Lester's of Minnesota, Inc. (collectively, "Lester")), brought an action against LP in Minnesota state court seeking damages for its alleged losses associated with the use of Inner-Seal Siding in constructing several thousand hog barns for customers during the years 1991-96. *Lester Building Systems, a division of Butler Manufacturing Company, and Lester's of Minnesota, Inc. v. Louisiana-Pacific Corporation and Canton Lumber Company*, McLeod County Dist. Ct. Civil File No. 43-C6-00-000335. App. 7a, 74a-75a.

There is no dispute that Lester is one of those entities within the "chain of distribution" against whom class members released all claims in the Class Settlement. There is also

no dispute that a substantial portion of Lester's customers were members of the class bound by the class settlement. Based on those facts, LP filed pretrial motions to exclude claims for the repair costs, but the trial court denied the motions, and further ruled that the effect of the class action was a question for the jury. App. 7a-8a, 75a.

At trial, Lester contended that business and moral compulsions required that it remove and replace the LP siding on every barn that it had built. It also argued that the class action did not preclude an award of damages allowing Lester to do just that. Lester offered evidence that removal and replacement of the siding on every barn would cost $13.2 million, with approximately $2 million of that amount being used for barns built after January 1, 1996 (*i.e.* property not covered by the Class Action Settlement). Lester offered testimony from its president that Lester intended to use the damages awarded in this state court lawsuit to "fix these buildings" and get "the farmer what he's entitled to." App. 8a-9a, 75a-77a.

At the conclusion of Lester's case, the trial court denied LP's directed verdict motion as to those damages. App. 9a, 78a. LP then presented its case, which included testimony regarding the terms and administrations of the Class Settlement and the remedy established to address claims by the Class Members. App. 10a. At the close of evidence, the state court instructed the jury that repair costs were not recoverable unless the barns had been built in or after 1996, or the jury found either that the class settlement fund would be insufficient to pay an owner's claim or that the barn would suffer defects after January 1, 2003. App. 10a-11a; 78a-79a.

After deliberating, the jury awarded Lester $29.6 million in damages. According to the special verdict form, $16.4 million of that verdict included compensation for (1) Lester's lost profits, (2) the amount Lester paid for Inner-Seal siding it purchased during the years in question, and (3) for a loss of goodwill. See App. 11a-12a & n.7.

The remaining $13.2 million represented the damages that Lester requested for building and repair costs for every building. As the court of appeals recognized, the jury failed to separate buildings constructed on or after January 1, 1996 (*i.e.* those outside of the Class Action, which encompassed most of the awarded repair costs) from those built before that date (*i.e.* those within the Class Action), effectively finding that none of Lester's damages were precluded by the Class Settlement. App. 11a-12a; see also App. 79a-80a.

On October 24, 2002, the state trial judge filed Findings of Fact, Conclusions of Law, and an Order for Judgment based on the jury verdict, but it refrained from entering the judgment for 30 days (as required by state law), and later extended that entry further pending the disposition of post-trial motions. App. 12a.

3. On November 6, 2002, LP filed with the United States District Court for the District of Oregon a motion to enforce the Class Settlement. See App. 12a. LP asked the Court to enjoin the Minnesota state court from entering judgment on that portion of the verdict representing damages that had been resolved in the Class Settlement (i.e., damages associated with the repair of buildings that had Inner-Seal Siding installed prior to January 1, 1996). App. 71a.

In a December 13, 2002, Opinion, Order, and Permanent Injunction, the district court granted LP's motion in part, and entered an "injunction enjoining the Minnesota state court from entering judgment on the portion of the jury's damages award that is encompassed in and precluded by the class action settlement agreement." App. 71a-72a, 83a. After reviewing the facts leading up to the state court jury verdict, the district court concluded that none of Lester's arguments permitted it to recover the same "relief in Minnesota that had, since 1996, been encompassed by the nationwide class action settlement." App. 81a.

The district court concluded that, if entered, the relevant portion of the jury verdict would "directly interfere with and

seriously impair [its] ability to supervise, implement, enforce, construe, and interpret the class action settlement over which [it] retained exclusive jurisdiction." App. 88a. Because the court found that an injunction would be "both authorized and necessary to protect the integrity of this court's Order, Final Judgment and Decree in the nationwide class action," App. 83a, it concluded that the "in aid of its jurisdiction" exception to the Anti-Injunction Act allowed entry of an injunction here. App. 87a-88a.

The district court also noted that entry of judgment on this portion of the state court verdict was necessary in order to protect and effectuate its judgment in the class action. The verdict, the court found, would "circumvent[ ] the settlement agreement and the elaborate negotiated claims resolution procedures contained therein." App. 88a.[1]

4. Lester appealed to the United States Court of Appeals for the Ninth Circuit. In a divided 66-page decision in which all three panel judges wrote opinions, the court of appeals reversed.

a. In a majority opinion written by Judge Clifton (joined by Judge Silverman), the court held, first, that the district

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[1] In Minnesota State Court, LP argued in post-trial motions that the jury's verdict was inconsistent with applicable law and the state court's own rulings. The state court denied LP's motions, however, and, in late January of 2003, entered a final judgment in Lester's case. *See* ER 810-39. The judgment awarded Lester $20 million (that portion of the judgment on the jury's verdict that had not been enjoined by the district court in this case), and LP filed an appeal in the Minnesota Court of Appeals, which later affirmed the state trial court's judgment. *See Lester Bldg. Systems v. Louisiana-Pacific Corp.*, 2004 WL 291998 (Minn. App., Feb 17, 2004, *rev. denied*, No. A03-48 (Minn. S. Ct., April 28, 2004). The Minnesota Court of Appeals held that if the enjoined portions of the judgment were later entered, LP could appeal from the entry of that judgment. *Id.* at *8. LP's subsequent petition for review to the Minnesota Supreme Court was denied. *Lester Bldg. Systems, et. al. v. Louisiana-Pacific Corp.*, No. A03-48 (Minn. S. Ct. April 28, 2004) (denying petition for review).